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DEPT OF INSURANCE
ARIZONA BY <u>M&K</u>

## STATE OF ARIZONA

## DEPARTMENT OF INSURANCE

In the Matter of:

No. 19A-021-INS

KATAL, INGRID E.,

**ORDER** 

Petitioner.

On May 10, 2019, the Office of Administrative Hearings, through Administrative Law Judge Thomas Shedden, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Director") on May 13, 2019, a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

- The Director adopts the Recommended Findings of Fact and Conclusions of Law.
- 2. The Director denies **Ingrid E. Katal's** application for an Arizona insurance producer license.

### **NOTIFICATION OF RIGHTS**

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Petitioner may request a rehearing with respect to this order by filling a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

1	Petitioner may appeal the final decision of the Director to the Superior Court of			
2	Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal			
3	must notify the Office of Administrative Hearings of the appeal within ten days after filing			
4	the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).			
5	DATED this /412 day of, 2019.			
6				
7	Keith A. Schraad, Director			
8	Arizona Department of Insurance			
9				
10				
11	COPY of the foregoing mailed this, 2019, to:			
12	Ingrid Katal			
13	Farmers Insurance Exchange 16001 N. 28 <sup>th</sup> Ave.			
14	Phoenix, AZ 85053			
15	Petitioner			
16	Office of Administrative Hearings 1740 West Adams St., Lower Level Phoenix, Arizona 85007			
17				
18	COPY delivered same date to:			
19	Mary Kosinski, Executive Assistant for Regulatory Affairs Catherine O'Neil, Consumer Legal Affairs Officer			
20	Steven Fromholtz, Asst. Dir., Consumer Protection Division Aqueelah Currie, Licensing Supervisor			
21	Sharyn Kerr, Consumer Protection Division Arizona Department of Insurance			
22	2910 North 44th Street, Suite 210 Phoenix, Arizona 85018			
23	COPY sent same date via electronic mail to:			
24	Ingrid E. Katal			
25	ingrid.katal@farmersinsurance.com Petitioner			
26				

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MAY 1 3 2019

## IN THE OFFICE OF ADMINISTRATIVE HEARINGS

DEPT. OF INSURANCE BY:\_\_\_\_\_\_

In the Matter of:

No. 19A-021-INS

KATAL, INGRID

ADMINISTRATIVE LAW JUDGE DECISION

Petitioner.

HEARING: April 8, 2019

APPEARANCES: Ingrid Katal on her own behalf; Deian Ousounov, Esq. for the Department of Insurance

**ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

## **FINDINGS OF FACT**

- On February 12, 2019, the Arizona Department of Insurance ("Department") issued a Notice of Hearing setting the above-captioned matter for hearing on April 8, 2019 at the Office of Administrative Hearings in Phoenix, Arizona.
- 2. The issue for hearing is Petitioner Ingrid Katal's appeal of the Department's decision to deny her application for a producer's license.
- 3. Ms. Katal appeared and testified on her own behalf, and she also presented the testimony of Gina Hattenbach.
- 4. Ms. Hattenbach has been licensed as an attorney in California since 1999. Between 2003 and 2015 she represented Ms. Katal in various matters, and she has been Ms. Katal's friend for sixteen years.
- 5. The Department presented the testimony of Aqueelah Currie, its Licensing Supervisor.
- 6. On December 4, 2018, Ms. Katal filed with the Department an application for an Individual Producer License.
- 7. In her application, Ms. Katal answered "yes" to Question 5 of the Background section, which as pertinent to this matter, asks whether the applicant has been found liable in a lawsuit involving allegations of fraud.

Office of Administrative Hearings 1740 West Adams Street, Lower Level Phoenix, Arizona 85007 (602) 542-9826

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- 8. Ms. Katal disclosed that a judgment had been entered against her in a lawsuit in California. The judgment arose from a fraudulent transfer made to Ms. Katal at the time of her divorce.
- 9. In a letter dated January 18, 2019, the Department informed Ms. Katal that her application had been denied based on ARIZ. REV. STAT. section 20-295(A)(8).
- 10. Ms. Katal requested a hearing, which led to the instant matter be scheduled.
- 11. In 2004, Ms. Katal and her now ex-husband, Siamak Katal, created the Katal Revocable Living Trust and were co-trustees.
- 12. Ms. Katal and Mr. Katal created a company called Detection Logic Fire Protection, Inc. that was sold to Integrated Products and Services, Inc. ("IPS") on December 12, 2008.
- 13. In March 2010, IPS filed an Amended Complaint against Kayne Anderson Private Investors, L.P. and others related entities ("Kayne Anderson"), Mr. Katal, the Trust. Some evidence shows that Ms. Katal had also been named as a party in that suit and was eventually dropped as a defendant, but there is also evidence to the effect that she was not named in that suit.
- 14. In April 2010, Ms. Katal and Mr. Katal separated and in June 2010 they filed for divorce.
- 15. On June 9, 2010, Ms. Katal executed an amendment to the Trust, which was at that time known as the Katal Family Trust. At that time, Ms. Katal voluntarily resigned her rights and responsibilities as a trustee and trustor in the Trust, and Mr. Katal became the sole trustee. After that time Ms. Katal did not act as a trustee for the Trust.
- 16. Through Awards entered in January and April 2011, IPS obtained a judgment against Mr. Katal, the Trust and Kayne Anderson. Kayne Anderson paid that judgment and then filed suit against Mr. Katal and the Trust for comparative equitable indemnity, contribution, and other causes of action. Kayne Anderson was awarded a judgment against Mr. Katal and the Trust in the amount of \$9,756,163.70.
  - 17. Ms. Katal and Mr. Katal were divorced in 2012.

18.

(and Does 1 -10) in the Superior Court of Los Angeles County a complaint for fraudulent transfer.
 19. Kayne Anderson in its suit against Ms. Katal alleged in essence that M

On or about October 23, 2014, Kayne Anderson filed against Ms. Katal

- 19. Kayne Anderson in its suit against Ms. Katal alleged in essence that Mr. Katal and the Trust had made transfers to her in an attempt circumvent its judgment against Mr. Katal and the Trust.
- 20. Ms. Katal initially defended herself in the lawsuit, but on March 6, 2017, the Court entered a default judgment against Ms. Katal and found her liable for damages of \$2,193,149.
- 21. According to Ms. Katal, she stopped defending herself because of the cost of doing so.
- 22. Ms. Katal and Ms. Hattenbach testified that Kayne Anderson's suit against her was filed as a means to get Mr. Katal to pay the judgment against him, and both stated that other parties in these lawsuits had acknowledged that fact.
- 23. Ms. Katal also testified to the effect that the Kayne Anderson suit involved money that she received as part of the divorce settlement and that all she received in that settlement were the "paychecks" she had earned over the years. She testified that Kayne Anderson thought she had received in the divorce the amount of its judgment against her, but it was actually less than that.
- 24. At the hearing, Ms. Katal requested an opportunity to show that as early as 2005 she was no longer a member of the Trust, and the record was held open to allow her to submit additional exhibits. Those exhibits show however that she was a member of the Trust until June 2010.
- 25. According to Ms. Hattenbach, she was representing Ms. Katal and Mr. Katal in the original dispute with IPS, and in 2010 she learned information that caused her to believe Mr. Katal had committed fraud in that matter (i.e., the sale of Detection Logic to IPS, which is not the same transaction for which the judgment against Ms. Katal was entered). As such, she could no longer represent both of them and Ms. Katal

<sup>&</sup>lt;sup>1</sup> Ms. Katal's Exhibit B shows that she and Kayne Anderson had reached a settlement, but payments were not made according to the terms of that agreement and Kayne Anderson began to prepare for trial.

hired another lawyer, who represented Ms. Katal during the lawsuit brought against her by Kayne Anderson.

- 26. Ms. Hattenbach testified as to her opinion that Ms. Katal did not commit a fraudulent transfer and that Ms. Katal would not lie.
- 27. Ms. Hattenbach was of the opinion that Ms. Katal was not connected with the Trust as of the time Detection Logic was sold.<sup>2</sup> But this is not consistent with documents in the record showing that Ms. Katal was a trustee until 2010 and that the sale of Detection Logic occurred in 2008. More importantly, Ms. Katal raised similar arguments in a Motion to Dismiss the Kayne Anderson lawsuit and that Motion was denied.
- 28. Ms. Currie testified to the effect that the default judgment operates as an admission that the allegations in Kayne Anderson's complaint are true. Because Ms. Katal was involved with the Trust, she was considered to be untrustworthy.
- 29. Ms. Katal acknowledged that under the law her default is an admission that the allegations in Kayne Anderson's complaint are true, but she did not admit liability then, and does not admit liability now. But she also testified that the outcome of the lawsuit would have been uncertain if she had continued to defend and that she had very strong defenses.
- 30. The fraudulent transfer is of concern to the Department because licensees have access to clients' money, and in this case, the size of the judgment is also of concern.
- 31. The Department denied Ms. Katal's application in large part because of the judgment against her.
- 32. Ms. Katal testified that she is not a threat to the public and to the effect that the default judgment is the only issue that might raise a concern.

## **CONCLUSIONS OF LAW**

1. Ms. Katal bears the burden of persuasion. See ARIZ. REV. STAT. § 41-1092.07(G)(1).

<sup>&</sup>lt;sup>2</sup> Ms. Hattenbach acknowledged that her recollection of the events was not clear.

- 2. The standard of proof on all issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.
  - 3. A preponderance of the evidence is:

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

- 4. The judgment against Ms. Katal shows that she has engaged in conduct that included using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere. Consequently, the Department's Director has discretion to deny Ms. Katal's application based on ARIZ. REV. STAT. section 20-295(A)(8).
- 5. Ms. Katal does not accept that she is liable for the actions that resulted in the judgment against her. But she also testified that the outcome of the lawsuit would have been uncertain and that she had good defenses, which indicates that she was not entirely without culpability in the matter.
- 6. Although Ms. Hattenbach testified as to Ms. Katal's honesty, there is a potential bias given her involvement in the underlying lawsuits and her relationship with Ms. Katal that limits the weight of her testimony.
- 7. Ms. Katal has failed to demonstrate by a preponderance of the evidence that the Department's decision to deny her application should be overturned.
  - 8. Ms. Katal's appeal should be dismissed.

#### ORDER

IT IS ORDERED that Ingrid Katal's appeal is dismissed.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order is five days after the date of that certification. Done this day, May 10, 2019.

<u>/s/ Thomas Shedden</u> Thomas Shedden Administrative Law Judge

Transmitted electronically to:

 Keith A. Schraad, Director Arizona Department of Insurance